

### **REMARKS**

Claims 1 – 31 are pending in the application. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **DRAWINGS**

The drawings stand objected to under 37 CFR 1.83(a) because they fail to show the system 100 as described in the specification. Applicants have attached a Replacement Sheet including a revised Figure 1 for the Examiner's approval. More specifically, revised Figure 1 includes a reference number 100 indicating the system. Therefore, reconsideration and withdrawal of the objection are respectfully requested.

### **CLAIM OBJECTIONS**

Claim 31 is objected to because of the phrase "the graded surface", which should be – a graded surface –. Claim 31 has been amended herein per the Examiner's suggestion. Therefore, reconsideration and withdrawal of the objection are respectfully requested.

### **REJECTION UNDER 35 U.S.C. § 112**

Claims 2 – 5, 10, 12 and 15 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly

claim the subject matter which Applicant regards as the invention. This rejection is respectfully traversed.

The Examiner has indicated that claims 2 – 5, 10, 12 and 15 describe determining steps, but fail to cite where the determining steps fit into the method. Claims 2, 3, 5, 10 and 12 have been amended herein to better point out and distinctly claim the subject-matter which Applicants regard as the invention.

Claim 2 has been amended herein to include executing the step of automatically applying a brake torque based on the time period. Claim 3 has been amended to include determining the time period based on a driver request using an accelerator pedal. Claim 5 has been amended herein to include determining the time period based on the electric motor being supplied with current having a magnitude substantially equivalent to a stall current. Claim 10 has been amended to include determining that the vehicle driver has requested the movement torque based on an accelerator pedal being at least at a predetermined position. Claim 12 has been amended to include determining that the vehicle driver has requested the roll torque based on an accelerator pedal being at least at a predetermined position. Therefore, reconsideration and withdrawal of the rejections are respectfully requested.

In view of amended claim 2, claim 4, which ultimately depends from claim 2, now particularly points out and distinctly claims the subject-matter which Applicants regard as the invention. Therefore, reconsideration and withdrawal of the rejection are respectfully requested.

Applicants respectfully assert that claim 15, as originally presented, points

out and distinctly claims the subject-matter which Applicants regard as the invention. More specifically, claim 1 includes determining that the powertrain system is supplying a hold torque, the hold torque having a magnitude sufficient to substantially maintain the vehicle at a substantially zero speed on the graded surface. Claim 15, which depends from claim 1, includes determining that the vehicle has a substantially zero speed and determining that the graded surface has a grade of a predetermined magnitude. Thus, the subject-matter of claim 15 includes steps of determining conditions under which the steps of claim 1 are achieved. Therefore, reconsideration and withdrawal of the rejection are respectfully requested.

#### **REJECTION UNDER 35 U.S.C. § 102**

Claims 1 – 4, 6 – 10, 13 – 15, 18 – 20, 22 – 24, 26, 28 and 31 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Kuno et al (2004/0012250). This rejection is respectfully traversed.

Applicants respectfully note that Kuno et al. is not a valid §102(e) reference in view of the Declaration Under 37 C.F.R. §1.131 (hereinafter “the Declaration”) filed herewith. More specifically, the Declaration establishes that Applicants conceived of the present invention in the United States prior to the December 16, 2002 effective date of Kuno et al. The Declaration also establishes that Applicants reduced the invention to practice in the United States prior to December 16, 2002. The reduction to practice occurred in the form of compiled and executed software program, which sufficiently demonstrated that

the invention worked for its intended purpose (see MPEP §2138.05, citing *King Instrument Corp. v. Otari Corp.*, 767 F.2d 853, 860, 226 USPQ 402, 407 (Fed. Cir. 1985)).

In view of the foregoing, Kuno et al. is not a valid §102(e) reference and reconsideration and withdrawal of the rejections are respectfully requested.

#### **REJECTION UNDER 35 U.S.C. § 103**

Claims 5 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuno et al (2004/0012250) in view of Atkinson (6,000,488). Claims 11, 12 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuno et al (2004/0012250). Claims 16, 17, 29 and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuno et al (2004/0012250) in view of Messersmith (4,666,021). Claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuno et al (2004/0012250) in view of Eguchi et al (6,336,689). These rejections are respectfully traversed.

As discussed in detail above, Kuno et al. is not a valid reference under §102(e) and therefore, Kuno et al. can not be applied under §103(a). Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

## CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at 313-665-4969.

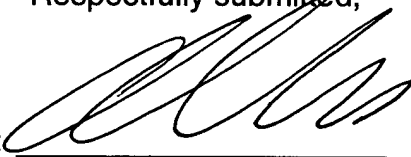
If for some reason a fee needs to be paid, as well as one-month extension fee please charge Deposit Account No. 07-0960 for the fees, which may be due.

Dated: \_\_\_\_\_

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Respectfully submitted,

By: \_\_\_\_\_



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### **AMENDMENTS TO THE DRAWINGS**

The attached Replacement Sheet of drawings includes changes to Figure 1. More specifically, revised Figure 1 includes a reference number 100 indicating the system. No new matter has been entered. The attached sheet, which includes Figure 1, replaces the original sheets including Figure 1.